

DISTRICT OF COLUMBIA COURT OF APPEALS

INTERNAL OPERATING PROCEDURES*

As Revised February 1, 2007

* These procedures serve as guidelines to the judges and the Clerk of the Court of Appeals in conducting the internal operations of the court. Because they are published on the court's website, they are also meant to provide information to the public about how the court carries out its operations. At the same time, they are not intended to and do not create obligations on the part of the court enforceable by litigants or other members of the public. The rules governing practice before the court are set forth in its Rules of Appellate Procedure.

DISTRICT OF COLUMBIA COURT OF APPEALS

ERIC T. WASHINGTON, *Chief Judge*

MICHAEL W. FARRELL, *Associate Judge*

VANESSA RUIZ, *Associate Judge*

INEZ SMITH REID, *Associate Judge*

STEPHEN H. GLICKMAN, *Associate Judge*

NOËL ANKETELL KRAMER, *Associate Judge*

JOHN R. FISHER, *Associate Judge*

ANNA BLACKBURNE-RIGSBY, *Associate Judge*

PHYLLIS D. THOMPSON, *Associate Judge*

THEODORE R. NEWMAN, *Senior Judge*

WILLIAM C. PRYOR, *Senior Judge*

ANNICE M. WAGNER, *Senior Judge*

JOHN W. KERN, III, *Senior Judge*

JAMES A. BELSON, *Senior Judge*

WARREN R. KING, *Senior Judge*

JOHN M. FERREN, *Senior Judge*

FRANK Q. NEBEKER, *Senior Judge*

JOHN M. STEADMAN, *Senior Judge*

JOHN A. TERRY, *Senior Judge*

FRANK E. SCHWELB, *Senior Judge*

GARLAND PINKSTON, JR., *Clerk of the Court*

JOY A. CHAPPER, *Chief Deputy Clerk*

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I. Duties of the Chief Judge

The Chief Judge of the District of Columbia Court of Appeals has the following administrative powers and duties:

A. To designate hearing divisions by random selection to hear and/or determine cases and controversies pending before the court.

B. To assign pending cases and controversies by random selection to the designated divisions for hearing and/or determination.

C. To designate the time for the hearing of all cases and controversies pending before the court.

D. To designate judges by random selection to serve monthly on the Motions Divisions of the court.

E. To designate senior judges of the court to sit as division members on regular and summary calendars, to be drawn in accordance with the provisions of Part I.A.

F. To designate judges of the Superior Court of the District of Columbia to sit as division members, to be drawn in accordance with the provisions of Part I.A., whenever the business of the court requires.

G. To designate judges of the court or of the Superior Court, or another person, to conduct and preside over appeal conferences as provided in D.C. App. R. 14.

H. To designate judges to serve on court committees including those listed below and to establish and appoint members of such other committees as may become necessary:

Committee on Court Rules and Internal Operating Procedures
Judicial Conference Planning Committee
Criminal Justice Act Committee
Standing Committee on Fairness and Access

I. To revise, as needed and with the approval of the Board of Judges, the Internal Operating Procedures for the handling of the court's business and the fair distribution of work among its members.

J. To inform the Board of Judges of all matters affecting the court other than routine administrative details and to consult with the Board of Judges before taking a public position on proposed legislation or on any other matters to which the court should speak as one.

K. To preside at all conferences, meetings, and functions of which the court is a part.

L. To determine all procedural motions to file or to extend the time for filing briefs and other pleadings and documents provided for under the rules of the court, provided that a motions division may decide procedural motions that are associated with or related to substantive motions; to consolidate cases; to substitute parties; to enter agreed orders, judgments and decrees in cases not already before a division of the court or the en banc court; to determine motions to extend time to file or answer petitions for rehearing or rehearing en banc; to determine motions for leave to proceed on appeal in forma pauperis; to approve all vouchers for compensation under the Criminal Justice Act and the Counsel for Child Abuse and Neglect program, provided that the Chief Judge will obtain the recommendation of the appropriate members of the division that considered an appeal whenever the amount vouchered exceeds the maximum statutory compensation; and to rule on any other purely procedural matter relating to any proceeding or process in the court preparatory to hearing or decision on the merits.

M. To designate and assign temporarily one or more judges of the court to serve as a judge of the Superior Court of the District of Columbia pursuant to D.C. Code § 11-707 (b).

N. To designate a judge of the court or of the Superior Court to conduct a hearing on a petition from the Committee on the Unauthorized Practice of Law of this court pursuant to General Rule 49 (e).

O. To designate an acting and/or deputy chief judge to act as chief judge in the absence of the Chief Judge.

P. To make such reports to the District of Columbia Commission on Judicial Disabilities and Tenure as may be required by law.

Q. To serve as Chair of the Joint Committee on Judicial Administration.

R. To perform such other administrative duties as may be required and which are not otherwise provided for by law or rule.

II. Duties of the Clerk of the Court

The Clerk of the District of Columbia Court of Appeals has the following administrative powers and duties:

A. To monitor appeals and implement necessary procedures and systems to encourage prompt and timely compliance with the rules of the court.

B. To assist the Chief Judge in preparing the monthly calendar of hearing divisions and the assignment of cases for hearing and/or determination.

C. To publish the monthly calendar approximately 30 days before the first day of that month.

D. To coordinate and administer the screening of all appeals and petitions by senior judges or other judges of the court for a determination of the placement of such matters on the regular or summary calendars.

E. To prepare all orders to determine procedural motions and petitions which require the signature of the Chief Judge and to act on those procedural motions which the clerk is authorized by the Chief Judge to determine without reference to the court.

F. To supervise the work of the Chief Deputy Clerk, and to assign and delegate duties and responsibilities to the employees in the Office of the Clerk.

G. To send substantive motions to the assigned Motions Divisions on vote sheets, with or without staff counsel or motions clerk memoranda.

H. To send to the merits division or the en banc court, as appropriate, on vote sheets, petitions for rehearing or rehearing en banc.

I. To prepare orders reflecting the decisions of the motions or merits divisions, or the en banc court.

J. To prepare, sign, and enter judgments consistent with opinions of the court.

K. To circulate inquiries from litigants or counsel for litigants about delays in dispositions of appeals to the Chief Judge and to the judge to whom the opinion writing is assigned, and to reply to any such inquiry in accordance with instructions.

L. To act as Secretary of the Judicial Conference.

III. Meetings of the Board of Judges

A. The Board of Judges consists of the judges of the court in regular active service meeting together in their administrative capacity.

B. A regular meeting of the Board of Judges will typically be held on the second Monday of each month at a time designated by the Chief Judge; the Chief Judge may reschedule this meeting as the business of the court requires.

C. A proposed agenda will be circulated by the Chief Judge before each meeting. Additional items for discussion may be added by any associate judge after notice to the full court. New business may also be discussed at the meetings.

D. Special meetings of the Board of Judges may be called at any time by the Chief Judge and will be called upon the request of any two associate judges.

E. A judge who for any reason is unable to attend a scheduled meeting of the Board of Judges may leave a voting proxy with respect to a specific matter with the Chief Judge or with an associate judge, with notification to the Chief Judge.

F. At each meeting of the Board of Judges, or at separate meetings which the Chief Judge may schedule periodically, the Chief Judge may request a report from the assigned authoring judge of opinions in cases undecided for more than six months after argument or submission as to the status of those opinions. The status of pending motions and petitions may also be discussed.

IV. The Motions Division

A. A Motions Division designated by the Chief Judge under the provisions of Part I. D. consists of three judges, and has responsibility to:

1. Dispose expeditiously of all substantive motions and petitions submitted for determination, or if a memorandum from a staff counsel or motions clerk is necessary, expeditiously after receipt of such memorandum.

2. Dispose of bail appeals under D.C. Code § 23-1324, intra-trial government appeals under § 23-104, and juvenile appeals under § 16-2328, within the required time limits set forth in those Code sections, and extradition appeals under § 23-704.

3. Dispose of applications for allowance of or permission to appeal.

4. Dispose of motions to withdraw as counsel based on the ground that the appeal has no merit, but only after review of the record on appeal, including reporter's transcript.

5. Decide uncontested attorney discipline matters.

6. Decide applications for waiver of requirements for admission to the Bar.

B. The Board of Judges may establish separate motions divisions with responsibility for different categories of motions.

C. The Motions Division will act by three members on all substantive motions, petitions, and applications, except as otherwise provided by law or rules of the court.

D. Actions by a Motions Division are exempt from the requirements of Part VIII. that reversal of a judgment on appeal may be accomplished only by a signed or Per Curiam opinion circulated to the full court in advance of release, but the basis for any such reversal will be set forth in the judgment or order of reversal.

E. Every dispositive ruling by a Motion Division will contain an explanation for the ruling which may be brief and consist of citation to governing authority.

F. A Motions Division may elect to defer a matter to consideration by a Merits Division.

V. Calendaring of Cases

A. Cases will be calendared as provided in Part I. A. and B. After the briefs are filed, the clerk will inform the parties of the probable month(s) during which oral argument in a regular calendared case may be scheduled. The clerk's notice will solicit from the parties the days in the months of probable calendaring when counsel or a party pro se will be unavailable for oral argument due to other commitments. The clerk will endeavor to schedule a case on the regular calendar so as to avoid conflicts identified by the counsel or party pro se. The specific date and time of oral argument will be included in the monthly calendars (regular and summary) published by the clerk approximately thirty days before the first day of that month. Cases which are ready for argument will be calendared in the order in which appellees' briefs were filed, as far as practicable, except for those cases which are entitled to expedited consideration by law or by court rule, policy or practice.

B. The court may, on its own motion or for good cause shown on motion of any party, advance or continue any case calendared for hearing.

C. On Thursday of each week, the clerk will publish the names of the judges who will sit for the arguments scheduled on each day of the week beginning on the following Monday.

VI. Regular and Summary Calendars

A. After the filing of the brief of appellee or respondent, all cases will be screened by a senior judge, or another judge assigned by the Chief Judge, to determine whether the case should be placed on the regular or summary calendar. A case will be placed on the regular or summary calendar based upon the criteria specified in Part VI. B. and C.

B. A case will be placed on the regular calendar if it meets one or more of the following criteria:

1. the underlying decision may be reversed;
2. an issue of first impression may be raised;
3. a substantial issue as to the constitutionality of a statute may be raised;
4. an established rule of law may be applied to a novel fact situation;
5. the issues appear to be multiple or complex;
6. the decision may alter, modify or significantly clarify a rule of law previously decided;
7. an existing rule of law may be criticized or questioned; or
8. a recommendation to discipline an attorney or to deny reinstatement of a disciplined attorney is contested by the attorney or any other party to the proceeding.

C. A case will be placed on the summary calendar if it does not meet any of the criteria set forth in Part VI.B.

D. Not more than one senior judge will be assigned to a regular calendar.

E. A case placed on the regular calendar will be argued on the scheduled date, unless the division to which the case is assigned orders *sua sponte*, or upon motion of one or more of the parties, that the case be submitted without oral argument. A case placed on the summary calendar will be deemed submitted to the court without oral argument unless a written request by one of the parties for oral argument is served on all parties and filed with the clerk within 10 days after notice of calendaring has been mailed by the clerk. Timely requests for oral argument in summary cases may be granted by the clerk or referred to the Merits Division for disposition. Untimely requests for oral argument in summary cases will be referred to the Merits Division for disposition.

F. Except in unusual circumstances, the court will not hear argument in regular calendar cases during the months of July and August. The court may, however, schedule one or more summary calendars of cases during these months, to be decided by divisions consisting of active and senior judges.

VII. Assignment of Cases

A. To ensure fairness in the assignment of judges and the calendaring of cases, the functions of (1) assignment of divisions and (2) calendaring of cases will be separated.

B. In general, divisions are assigned to hear cases based on a process of random selection of judges. A purpose of this practice is to ensure, as far as possible, equal distribution of the court's workload among the judges. When personal circumstances or the needs of the court dictate, however, the Chief Judge may decrease or increase the number of cases assigned to an individual judge in a given month.

C. Preparation of the court's opinion will be assigned to a member of a division by random selection before argument but may, if necessary, be reassigned after argument in accordance with Part VIII.A.

D. When a judge decides for any reason to recuse in a particular case to which that judge is assigned, the Clerk will designate a replacement for that judge where required.

E. When a judge determines for any reason that the judge is unable to be present on the day argument is scheduled, the judge may participate in the decision of a case after listening, if necessary, to the oral argument. Otherwise, the Clerk will designate a replacement for that judge from available judges.

F. Whenever a judge is recused after a case is submitted or argued, or for any other reason is unable to participate in the disposition of a case, the remaining members of the

division will consider whether the issues are of sufficient difficulty (including but not limited to whether they are unable to agree) to make it advisable or necessary to designate a third judge. If a third judge is designated after argument, the division will decide whether the case will be reargued or whether the newly designated judge will hear the argument from the recording of the courtroom proceedings. In any event, a third judge will be designated in accordance with Part VII. D. for any submitted or argued case requiring a published opinion.

G. When a remand retains jurisdiction in the court, the case will be resubmitted to the same division upon return to the court after remand.

VIII. Post-Argument Conference and Opinion Writing

A. The division members will confer on the cases following oral argument. Ordinarily the presiding judge will ask the judge to whom opinion writing was tentatively assigned before argument to present an analysis and a recommended disposition. The assigned judge has the task of drafting an opinion if, at the conclusion of the discussion, that judge is in the majority. If the assigned judge is in the minority, the case will be reassigned by the senior member of the majority in regular active service. A final vote may be deferred pending preparation of a draft by the assigned judge.

B. Opinions issued by the division may be:

1. An opinion for publication identifying the authoring judge.
2. An opinion for publication Per Curiam.
3. An unpublished Memorandum Opinion and Judgment.

C. Instead of an opinion, the court may issue an Order, published or unpublished, that remands the record or the case to the trial court or agency for a limited purpose, such as clarification of reasoning or compliance with a procedural requirement.

D. A Memorandum Opinion and Judgment may be used when a division unanimously determines that a judgment of the trial court or a decision of an administrative agency should be affirmed or enforced, and the decision of this court:

1. does not establish a new rule of law;
2. does not alter, modify, criticize, or clarify an existing rule of law;

3. does not apply an established rule of law to a novel fact situation;
4. does not constitute the only, or only recent, binding precedent on a particular point of law in this jurisdiction; and
5. does not involve a legal issue of continuing public interest.

The court ordinarily will publish an opinion that reverses a judgment of the trial court or a decision of an administrative agency. However, a Memorandum Opinion and Judgment may be used to reverse when requirements 1 through 5 of this section are satisfied and when, in addition, the division unanimously determines that it is not necessary to publish the opinion to provide guidance to the bench and the bar.

A Memorandum Opinion and Judgment will include a statement of the issues considered by the panel and an explanation of how they were resolved. The explanation may be brief and include reference to a trial court or administrative opinion or to the briefs of a party.

E. Unless each of the standards contained in Part VIII. D. is met, the division will issue for publication an opinion identifying the authoring judge or a Per Curiam opinion. Also, a published opinion will be used instead of a Memorandum Opinion and Judgment if a member of the division so requests.

F. The following procedures govern the drafting and circulation of opinions:

1. The judge to whom drafting is assigned will circulate a proposed opinion to the division within 180 days of the date of oral argument, or the date on which the case was submitted if oral argument was not heard on appeal. The presumption is that this period will allow ample time for the preparation of an opinion, and instances where it is exceeded should be rare, involving, for example, cases of unusual complexity. Nevertheless, if the assigned judge concludes that the 180-day limit cannot be complied with in a particular case, the judge will indicate that fact in a memorandum to the other division members proposing a revised date of circulation. A copy of the memorandum will also be provided to the Chief Judge. This requirement of a memorandum will apply only to cases submitted to the division after adoption of these revised Internal Operating Procedures.

2. If a proposed opinion is not circulated within the time set forth above and a single extension as provided, the Chief Judge may reassign drafting of the opinion to another division member after consultation with the division.

3. When a draft opinion has been circulated, the other judges on the division will approve, disapprove, or make suggestions as to modifications of the draft within 15 days from its circulation. Responding to a circulated opinion is to be given the highest priority by the other two judges. If no response is received from a division member within the 15-day period, that member is deemed to have adhered to the draft and the member's name will appear on the published opinion as a participant. If, within the 15-day period, a member states an intention to write a separate opinion concurring or dissenting, the member will have an additional 30 days in which to prepare that opinion, although this time may be extended, by agreement of the division members, for a period not to exceed 30 days. The time limitations in this paragraph do not apply while a judge is ill or on leave.

4. Once all responses are received from the division members, the author of the circulating draft opinion may change the draft to accord with the comments received. If the changes are substantive or significant, a revised draft opinion will be circulated to the division within 15 days, to which new responses will be made as provided above in the case of initially circulated drafts. If the changes are insignificant or technical, reapproval by the division is not required.

5. Should the other division members disagree with the circulated draft, the opinion writing will be reassigned by the presiding judge unless that judge is the opinion writer, in which event it will be reassigned in accordance with Part VIII.A.

6. An opinion intended for publication will be circulated for consideration by the full court for a period of 5 working days before it is published. If the division makes substantive changes to the opinion in response to comments received during this period, the opinion will be re-circulated to the full court for a period of up to 5 days. In cases where immediate issuance of an opinion is necessary, the division may request that the normal period for consideration by the full court be abbreviated.

7. Priority in opinion writing, as far as practicable, will be given in accordance with D.C. App. R. 4 (c) to:

(a) emergency appeals, including, but not limited to, pre-trial bail or detention appeals, *see* D.C. Code § 23-1324 (2001); juvenile interlocutory appeals, *see* D.C. Code § 16-2328 (2001); and government appeals from mid-trial rulings in criminal cases, *see* D.C. Code § 23-104 (b), (d) & (e) (2001); and

(b) expedited appeals, including but not limited to, government appeals from pre-trial orders in criminal cases, *see* D.C. Code § 23-104 (a)(1) (2001); appeals from orders of the Family Court terminating parental rights or denying adoption petitions, *see* D.C. Code § 11-721 (g) (2001 & Supp. 2006); extradition appeals, *see* D.C. Code § 23-704

(2001); and appeals from orders in juvenile custody cases holding an individual in contempt and imposing the sanction of imprisonment, *see* D.C. Code § 11-721 (f) (2001).

After emergency and expedited appeals, priority in opinion writing ordinarily will be given to appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision, *see* D.C. Code § 16-2329 (2001), and to other appeals involving child custody; to interlocutory appeals, *see generally* D.C. Code § 11-721 (a)(2) & (d) (2001); and to appeals involving certified questions of law, *see* D.C. Code § 11-723 (2001). Further, as provided in D.C. Code § 34-605 (a) (2001), appeals from orders or decisions of the Public Service Commission “shall have precedence over any civil cause of a different nature.”

Subject to the foregoing order of precedence, priority in opinion writing will be given:

(a) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions and to opinions in en banc cases;

(b) to appeals in the order in which they were submitted to the division for disposition. Cases which have been pending before the division for over one year will be given the utmost priority whenever possible.

8. In all opinions, published or unpublished, in appeals from an adjudication of delinquency or neglect, termination of parental rights, or an unconsented adoption, initials instead of names will be used to refer to individual persons who are parties. Initials will also be used in place of names to identify the victim in any appeal from a conviction or delinquency adjudication arising from a sexual assault.

9. Citations appearing in opinions will be in conformity with the current edition of “A Uniform System of Citation” published and distributed by the Harvard Law Review Association, except as the court may otherwise direct or authorize in the court’s Citation Guidance Memorandum, as revised.

IX. Publication of Opinions

A. A “published” opinion means an opinion by the court the text of which is printed electronically on the website of the District of Columbia Court of Appeals and in the pages of the Atlantic Reporter.

B. All opinions, whether identifying the authoring judge or Per Curiam, will be published. Memorandum Opinions and Judgments, though nominally also issued by the court Per Curiam, will not be published.

C. All attorney discipline opinions will be published, except that the following decisions in disciplinary cases need not be published routinely: temporary suspensions pursuant to D.C. Bar Rule XI, § 3 (c), interim suspensions pursuant to Rule XI, § 10 (c), and suspensions based on medical disabilities pursuant to Rule XI, § 13 (a) and (c).

D. In conformity with D.C. App. R. 28 (g) (prohibiting citation by a party to unpublished opinions or orders), opinions of the court will not cite to or rely upon unpublished opinions or orders of the court except as provided in Rule 28 (g).

X. Petitions for Rehearing

A. If a petition for rehearing is filed with the division, the clerk will transmit the petition to the division. Any member of the division may request the filing of an answer within 10 days after transmittal of the petition. Upon receipt of an answer, or if none has been requested, the judge who authored the majority opinion may circulate a memorandum suggesting a recommended disposition and, if appropriate, a draft revised opinion reflecting matters raised in the petition for rehearing.

B. The division will vote to grant or deny rehearing within 30 days after transmittal of the petition or a requested answer. Rehearing will be granted if two or more judges vote to do so. Otherwise, an order will be entered denying the petition.

C. Whether or not a petition for rehearing is granted, the original opinion (published or unpublished) may be amended or withdrawn. If it is withdrawn, a new opinion may be issued.

XI. Petitions for Rehearing En Banc

A. To avoid conflicts in division decisions and to preserve stability of the court's decisions, no subsequent division may overrule a published opinion of a previous division. En banc consideration is required to overrule a previous decision of the court. En banc consideration is also required before the court declines to follow a binding decision of the United States Court of Appeals for the District of Columbia Circuit (*i.e.*, a decision rendered before February 1, 1971).

B. The filing of a petition for rehearing en banc does not take the case out of the plenary control of the division deciding the case. The division may, on its own, grant rehearing and may do so without action by the full court. If the division issues a revised opinion in response to the petition for rehearing en banc, the order accompanying the opinion will vacate the previous opinion and further state that the opinion and order are without prejudice to the filing of a new petition for rehearing en banc addressed to the revised opinion.

C. Pursuant to D.C. Code § 11-705 (d), rehearing of an appeal en banc may be ordered by a majority of the judges in regular active service (hereafter referred to as “active” judge or judges). Only the active judges may vote on whether to grant rehearing en banc. The court for an en banc rehearing consists of the active judges, except that a senior judge who was a member of the division that decided the case may sit as a judge of the court en banc.

D. The clerk will transmit an en banc petition to the active judges and to a senior judge who was a member of the division in the case. An answer to the petition will be ordered if requested by two judges of the court including active judges and a senior judge who was a member of the division. A request for an answer will be made within 10 days after transmittal of the petition to the judges. If two judges request an answer, the clerk will enter an order directing an answer to be filed within 14 days from the date of the order. The clerk will send a copy of the answer received to each member of the division that heard and decided the case, and to all other active judges of the court.

E. Any active judge or any senior judge who is a member of the division that decided the case may request a poll of the active judges as to whether the petition should be granted. A request for a poll will be made within 15 days of transmittal to the judges of the petition or a requested answer. If no request for a poll is made, the petition will be denied and an order will be entered reflecting that no judge has called for a vote on the petition.

F. Whether or not a petition for rehearing en banc has been filed, any active judge or a senior judge who was a member of the division may request, sua sponte, a poll of the active judges as to whether rehearing en banc should be granted in a case.

G. Upon receipt of a request to poll the court, the clerk will send each active judge a form ballot upon which to cast a vote.

H. When a majority of votes has been cast in favor of either granting or denying rehearing en banc, the clerk will notify the judges of the result. Within 5 days, the judges who have not voted on the petition will do so or notify the clerk that a separate statement of views will be filed. A judge will have 30 days in which to file a separate statement, but the

en banc order will issue after the expiration of that time whether or not such a statement has been received.

I. When the court has voted to grant rehearing en banc, the clerk will enter an order vacating the judgment and opinion issued by the division.

J. A judge of the Superior Court who, pursuant to D.C. Code § 11-707, is a member of the division that decided a case may request a vote on a petition for rehearing en banc in the case, but may not participate in the vote or in a subsequent rehearing of the case en banc.